

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Clarification of the Commission's)	
Rules and Policies Regarding Unbundled)	WC Docket No. 01-338
Access to Incumbent Local Exchange)	
Carriers' Inside Wire Subloop)	
)	

SBC'S REPLY COMMENTS

In its comments, SBC demonstrated that no Commission rule requires ILECs to provide CLECs the sort of “direct access” to ILEC terminals on multi-tenant premises that Cox now demands. To the contrary, the Commission’s orders and rules fully support the establishment of appropriate safeguards that balance the needs of CLECs to gain efficient access to multi-tenant premises subloops and the needs of ILECs to maintain the integrity and security of the public switched telephone networks for which they are responsible. In helping itself to “direct access” in Oklahoma, Cox has already damaged and degraded that network and caused thousands of outages and trouble incidents for telephone customers in the Oklahoma City area. Rather than condone and permit such practices, the Commission’s rules require that the manner in which CLECs access multi-tenant premises subloops be decided on a case-by-case basis by state commissions taking into account network security and operational concerns.

That is precisely what happened in Oklahoma, in which an Administrative Law Judge (“ALJ”) determined that Cox’s “direct access” demand poses a substantial threat to network security and integrity. The decision of the Oklahoma ALJ, which was upheld by the Oklahoma Corporation Commission (“OCC”), fully comports with the Commission’s directives for determining appropriate means of access to subloops. There is no basis for the Commission to supersede the decision of the OCC, and the Commission should flatly reject Cox’s demand that the Commission do so in the guise of a declaratory ruling.

Notwithstanding the Commission's rules directing states to resolve subloop access issues on a case-by-case basis, AT&T and Sunflower support Cox's demand that the Commission now declare a categorical and universal right on behalf of CLECs to "direct access" to ILEC multi-tenant premises terminals. Neither AT&T nor Sunflower, however, provides any legitimate basis for the Commission to do so. Sunflower's comments do not even address the issue of subloop access, and AT&T's comments offer no more than a pale shadow of the same flawed arguments raised by Cox in its petition. Neither AT&T nor Sunflower offers any reason for the Commission to deviate from its longstanding rules providing for a case-by-case assessment of technically feasible methods of accessing subloops.

Sunflower's comments are entirely immaterial to the issues in this proceeding. Specifically, Sunflower's comments have nothing to do with CLEC access to ILEC subloops at multi-tenant premises. What Sunflower complains of in its comments involves the location of demarcation points on a single multi-tenant premises in Kansas—and the obligations of the ILEC to move those demarcation points at the request of the premises owner—which is a fundamentally different issue than the issue of whether CLECs may "directly access" ILEC multi-tenant premises terminals.¹ Sunflower has never requested to negotiate interconnection provisions for multi-tenant subloops in Kansas. Nor has it ever purchased subloops from SBC to serve any multi-tenant premises in Kansas, including the Sunrise Place Apartments. Nor does it offer any facts or argument in support of a rule requiring "direct access" to ILEC terminals on multi-tenant premises. In short, Sunflower's comments have no bearing whatsoever on the issues in this proceeding.

AT&T argues that "existing precedents" require "direct access" to ILEC multi-tenant premises terminals.² That is simply not true. The Commission's rules require ILECs to provide

¹Moreover, SBC Kansas thought the issues raised by Sunflower had been resolved. In response to Sunrise Place Apartment's request, SBC Kansas offered two options for relocating the demarcation points at the Sunrise Place Apartments premises. Sunrise Place Apartments, however, chose not to avail itself of either option and has not further pursued the matter with SBC Kansas since June 2003.

² *AT&T Comments* at 1.

subloops as UNEs, and they require ILECs to allow CLECs to access UNE subloops at any technically feasible point in an ILEC's network.³ The Commission's rules requiring *what* ILECs must provide as subloop UNEs, and *where* ILECs must allow CLECs to access those UNEs, however, are not the issue here. Rather, Cox's petition addresses the question of *how* ILECs must allow CLECs to gain access to subloops. Although the Commission generally allows access "in any technically feasible manner,"⁴ no Commission rule specifically requires that ILECs allow CLECs to access subloops through "direct access" to ILEC multi-tenant premises terminals.⁵

To the contrary, the Commission requires that questions of "what is 'technically feasible' with respect to subloop access at a multiunit premises [are] left to the state in the context of particular interconnection arrangements pursuant to section 252 of the act."⁶ The Commission also requires that in resolving such issues, state commissions must consider operational concerns generally,⁷ and network integrity and reliability concerns in particular.⁸ The Commission thus

³ 47 C.F.R. § 319(b).

⁴ *Triennial Review Order* ¶ 350.

⁵ See *Qwest Comments* at 4. SBC agrees with Qwest that Cox's demand is really one for new rules. See *Qwest Comments* at 6-7. In addition to being a procedurally improper request for reconsideration as Qwest argues, *id.*, Commission issuance of a new rule would be improper in this instance without issuance of a Notice of Proposed Rulemaking. See *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

⁶ *Id.* n. 1057. See also UNE Remand Order ¶ 224 ("We find that the questions of technical feasibility, including . . . whether such interconnection would pose a significant threat to the operation of the network, are fact specific. Such issues of technical feasibility are best determined by state commissions.") As with Cox, AT&T erroneously relies on the brief statement in footnote 1013 of the Triennial Review Order to claim a right to "direct access." AT&T Comments at 4. As SBC discussed in its comments, however, see SBC Comments at 13-15, that footnote does not say that CLECs have the right to allow their technicians to cross connect their terminals directly to ILEC terminals, let alone the right to engage in self-help appropriation of ILEC wiring as demanded by Cox under the auspices of "direct access."

⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, FCC 96-325, 11 FCC Rcd. 15499 ¶ 198 (Aug. 8, 1996) ("Local Competition Order") ("We conclude that the term technically feasible refers solely to technical or operational concerns, rather than economic, space, or site considerations." See also 47 C.F.R. § 51.5 ("Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent

has in place a specific mechanism for addressing issues concerning technically feasible means of access to subloops that is fundamentally incompatible with Cox's demand for a universal and unequivocal declaration of a CLEC right to "direct access" to ILEC terminals.⁹

That mechanism, moreover, was used by the Oklahoma ALJ and the OCC in rejecting Cox's demand for "direct access" to SBC-Oklahoma's multi-tenant premises terminals. AT&T blithely suggests that network integrity concerns with "direct access" are "bogus."¹⁰ "Direct access," however, poses inherent risks to networks and the databases that manage those networks, which can cause service interruptions and outages as well as delays in service provisioning and repair. Indeed, the record in Oklahoma demonstrates that "direct access" does, in fact, "affect service to [a] significant number of customers," and that service outages caused by "direct access" are *not*, in fact, "exceedingly rare."¹¹ That record demonstrates that Cox's technicians damaged 7,100 of SBC-Oklahoma's terminals, caused more than 3,000 recorded instances of trouble on SBC Oklahoma's network and over 9,000 hours of service outages to SBC Oklahoma's customers.¹² And it was precisely these facts that led the Oklahoma ALJ to find that Cox's "direct access" demand poses a real threat to "network integrity, security and control, as well as accountability for damage and substandard engineering and operational practices."¹³ The record demonstrates that network security claims are not "bogus." To the contrary, they are very real and substantial.

technical or *operational concerns* that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods.")(emphasis added).

⁸ *Local Competition Order* ¶¶ 198, 203.

⁹ *See BellSouth Comments* at 3-7.

¹⁰ *AT&T Comments* at 6.

¹¹ *Id.*

¹² *SBC's Comments* at 12-13.

¹³ *Oklahoma Arbitrator's Report*. at 45; *see also id.* at 45-46 ("The Arbitrator finds that 'direct access,' as practiced by Cox in Oklahoma may cause SBC-OK unreasonably and unnecessary difficulty in

The Commission should deny Cox's demand that the Commission declare a CLEC right to "direct access" to ILEC multi-tenant premises terminals. The Oklahoma ALJ's decision fully comports with the rules established by the Commission for resolving questions of technically feasible means of accessing subloops, and there is no basis for the Commission to countermand or pre-empt that decision. Consistent with its rules, the Commission should uphold the ability of the OCC and other state commissions, based on the record of arbitrations before them, to require appropriate safeguards for CLEC access to multi-tenant subloops. At a minimum, the Commission should hold fast to its prior determinations that technical feasibility assessments of possible methods of access to unbundled network elements—including determinations as to operational and network integrity impacts—should be made on a case-by-case basis by state commissions.

Respectfully Submitted,

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maintaining network integrity, security and control (including tracking of network status and usage).") As with Cox, AT&T raises the strawman argument that the Oklahoma ALJ's decision was based on differences in state and federal law definitions of demarcation points and NIDs. *AT&T Comments* at 1-2, 5-6. The plain fact is that the Oklahoma ALJ rejected Cox's demand for "direct access" because such access would "seriously jeopardize SBC-OK's ability to maintain network integrity, security and control, as well as accountability for damage and substandard engineering and operational procedures." *Arbitrator's Report* at 45. Her decision is thus firmly grounded in the Commission's rules for addressing technical feasibility issues with respect to subloop access.